

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-126851-09

Date:

September 30, 2009

X =

Y =

State =

Date =

Dear :

This responds to a letter ruling request dated May 12, 2009, and subsequent correspondence, submitted on behalf of X and Y, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make (1) an election under § 301.7701-3(c)(1)(i) to classify X as an association taxable as a corporation for federal tax purposes effective as of Date, and (2) an election under § 856(l) of the Internal Revenue Code to treat X as a taxable REIT subsidiary (TRS) of Y effective as of Date.

The information submitted states that X was formed under the laws of State on Date. X was eligible to elect to be classified as a corporation effective on Date and intended to make such election effective as of Date. However, no Form 8832, Entity Classification Election, was timely filed for X.

The information submitted further states that Y, a real estate investment trust (REIT), indirectly owns stock in X. X and Y intended that X be treated as a TRS as of

Date and intended that Form 8875, Taxable REIT Subsidiary Election, be filed within 75 days of X's formation. The Chief Financial Officer (CFO) for X and Y believed that he had prepared and timely filed both Form 8832 and Form 8875. However, upon further inquiry, X and Y discovered that Form 8832 and Form 8875 had not, in fact, been filed.

X and Y make the following representations. The granting of relief under § 301.9100-3 would not result in X or Y having a lower tax liability in the aggregate for all years to which the election applies than each would have had if the election had been timely made (taking into account the time value of money). Neither X nor Y knowingly chose not to file the election. Neither X nor Y used hindsight in requesting relief. Finally, X and Y represent that they are not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662. X has submitted the affidavit of the CFO attesting to and supporting the facts and representations underlying this ruling request.

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7) or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in § 301.7701-3.

Section 301.7701-3(b)(1) provides that, unless it elects otherwise, a domestic eligible entity is (i) a partnership if it has two or more members; or (ii) disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided in § 301.7701-3(b), or to change its classification, by filing Form 8832 with the service center designated on Form 8832.

Section 301.7701-3(c)(1)(iii) provides that an election made under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed, if no date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed.

Section 856(l) provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a taxable REIT subsidiary. To be eligible for treatment as a taxable REIT subsidiary, § 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. Section 856(l)(2) provides that the term "taxable REIT subsidiary" includes, with respect to any REIT, any corporation (other than a REIT) with respect to which a taxable REIT subsidiary of such trust owns directly or indirectly securities possessing more than 35 percent of the total voting power of the outstanding securities of such corporation, or securities having a value of more than 35 percent of the total value of the outstanding securities of such corporation. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, the election and the revocation may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Internal Revenue Service (Service) announced the availability of Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a taxable REIT subsidiary. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. The instructions further provide that the effective date of the election cannot be more than 2 months and 15 days prior to the date of filing the election, or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service. Officers of both the REIT and the taxable REIT subsidiary must jointly sign the form.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3, to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 sets forth the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 60 days from the date of this letter to file a Form 8832 with the appropriate service center and elect to be treated as an association taxable as a corporation effective Date.

Furthermore, based on the information submitted and representations made, we conclude that X and Y have satisfied the requirements for granting a reasonable extension of time to elect under § 856(l) to treat X as a TRS of Y effective as of Date. Accordingly, X and Y are granted a period of time of 60 days from the date of this letter in which to file Form 8875 to make the intended TRS election. A copy of each letter should be attached to each form. A copy is enclosed for that purpose.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Internal Revenue Code and the regulations thereunder. Specifically, this ruling is limited to the timeliness of the filing of the Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Y otherwise qualifies as a REIT under subchapter M of the Code.

In addition, no opinion is expressed with regard to whether the tax liability of either X or Y is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Curt G. Wilson  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes

cc: